19 48

**File No.** B. Refugees/48

Legal **DEPARTMENT**

B **BRANCH**

**Subject:—**

L. A. Bill No. XVII of 1948

A Bill to provide for ~~[illegible]~~ compulsory registration and movement of refugees and for certain other purposes.

Bombay Act No. XXII of 1948.

**File No.** B. Refugees/48

Std. Sectt. Slip 24 B a.

550-R

Office of the R.L.A.

In case of premises occupied by the refugees unauthorisedly, they would be trespassers. In case of premises occupied by them with permission of the authorities owing them the refugees would be in the position of licensees and once the license is revoked by asking them to quit, they have no right to continue on the premises. In either cases it would be competent to the authorities to eject the refugees if they refuse to vacate by using such force as would be just sufficient or un necessary. No legislation for this purpose is necessary. If, however, it is considered necessary or desirable to take powers to sent the refugees to particular places and to regulate their movements in the Province, it would be necessary to undertake legislation.

Sd/- P. M. LAD, 6/11
Remembrancer of Legal Affairs.

U. O. to P./S. D. No. 72-P/Confl, dated the 7th Nov. 1947.

for signature.
SDP. 6-11-47.
A.A.L.R. Sd/- 6/11.
D.S. Sd/- 6/11.

1/6
K.S.R.
1/6

KVI. 25/5.

Office of the R.L.A.

The Proposed legislation for registration of refugees can conveniently be combined with the legislation for empowering Government to send refugees to particular places and to regulate their movements in the Province.

Sd/- P.M. LAD,
Regr[illegible] of Local Affairs.

U. R. to P. & S. D., No. 78-P/Confl., dated the 7th Nov. 1947.

for signature.
DDP - 6/11/47.

A.A.L.R. Id/. 6/11.
D.S. Id/- 6/11.

RVT 26/6.

5

No. R.776/Genl

From

R.S. DAS, Esqr.,
Deputy Secretary to Government,
United Provinces,

To

The Secretary to Government of Bombay,
Legal Department,
Bombay Castle.

Dated Lucknow, December 5, 1947.

Sir,

With reference to your letter No. 11245 dated November 25th I am directed to enclose 2 copies of the U.P. Refugees Registration and Movement Ordinance and the U.P. Evacuees (Administration of Property) Ordinance 1947.

Refugee Department.

I have the honour to be,
Sir,
Your most obedient servant,
Sd/- R.S. DAS,
Deputy Secretary.

EVI. 20/5.

CENTRAL PROVINCES AND BERAR LEGISLATIVE ASSEMBLY.

MEMORANDUM.

No. 1082/XVIII, dated the 13/15th November 1947.

To

The Secretary to Government of Bomb
Legal Department.

With reference to your telegram dated the 10th November 1947, I enclose a copy of the Central Provinces and Berar Refugees Registration and Movement Act, 1947 (XXIX of 1947) as finally

Sd/- K.K. Rangole,

Assistant Secretary to C.P. a
Berar Legislative Assembly.

Enclosure to the above memo. is sent herewith.

sd/-
for Superintendent,
Assembly Department
16/11/47.

No. 13794/18-11-1947.

Submitted for information.

2. The remain case re Bombay ordinance has been submitted. This copy was received after submission of the main case.

Sd/- B.D.P. - 18/11/47

XVI. 26/5.

Office of the R.L.A.

On going through the proposition supplied by the Political & Services Department, and after consulting the legislation made in this behalf by the Provinces of C.P. and U.P., I am inclined to the opinion that legislation along these lines is not competent to a Province. Such legislation is properly referable to entry No. 17 in the Federal Legislative List, which after the recent adaptations, reads as follows: "Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subject domiciled in India or subjects of any acceding State". Our refugee problem is primarily one of regulating the movements of persons who have come or who may hereafter come from Pakistan or from the Indian State of Hyderabad which is not so far an acceding State. Howsoever widely we might frame the definition of the expression "refugee" so as to extend it even to persons who may come from other provinces of the Dominion of India, it is obvious that the legislation would be directed primarily to persons who come from Pakistan and Hyderabad; and in any event it would be impossible to sever the case of this latter class of persons. That class comes within the description "of persons who are not British subjects domiciled in India or subjects of any acceding State". India in this entry naturally means the Dominion of India. Compare also the corresponding entry for Pakistan. Legislation whereby such class of persons are required, after

their entry into the Province, or [illegible]
or to reside in a particular camp or a place or to go to a particular camp or a place as directed by the Provincial Government would be legislation falling directly under entry 17; for, it would be legislation for the regulation of the movements in relation to the admission of such class of persons into India. The words "in relation to" are quite wide, and on the recognised principles of interpretation, the entry including these words must receive a plenary meaning on broad and liberal principles. Perhaps this difficulty was realised by the Provinces of C.P. and U.P. who have, therefore, so framed their preamble as to suggest that the legislation falls not within entry 17 but is referable to some other entries in the Provincial List. I submit that the pith and substance of the legislation however is the regulation of movements of persons described in entry 17 in relation to their admission. The regulation is not intended primarily for the purpose of law and order nor for the purpose of sanitation and health or relief of the poor or unemployment. Legislation under those heads cannot naturally be directed only against a particular class of persons coming into India. The use of the word "movements" simpliciter, and the omission of the words "regulation of " to qualify the word "movements" would not also serve to conceal the real bject of the legislation. I apprehend that a preamble drafted in this fashion is liable to be challenged as a colourable exercise of the powers given to a Province however skilfully it may be drafted so as not to get hit by entry 17 in the Federal

Legislative List. It is quite apparent that the restrictions we are imposing upon the refugees by way of registration or controlling their movements are imposed upon them qua refugees, i.e. as outsiders who have come into our Province. The proposed provisions are almost indistinguishable from the provisions which we find in the Foreigners Acts of 1864 and of 1946, and these Acts have always been understood to be referable to entry No. 17. In short it would not be competent to a Province to frame legislation of the kind proposed, and such legislation can be promoted only by the Central Government. The Advocate General (Mr. C.K. Daphtary) who was unofficially consulted on this point agrees with this view.

2. Central legislation would also be more desirable from the point of view of practical expediency Powers can them be taken even to expel refugees from the Province and requiring them to go back to their homeland in case that course becomes necessary. The Health & Local Self Government Department made a suggestion that powers should be taken for compulsory inoculation and similar other purposes. Bombay being a port, people who land there from Pakistan territory may be required to be kept in a port quarantine for such purposes. That again is a subject only reserved for the Centre. In a Central legislation it would be easier to give a more logical definition of the term "refugee" than has been adopted so far. The problem of refugees is a common problem affecting almost all Provinces and from that point of view also, uniform Central legislation would be more desirable. H.M. (Law) is also of opinion that such legislation should be undertaken by

the Central Government.

3. The question may, therefore, be referred to the Central Government for a final decision. In the meanwhile, I am enclosing a draft modelled mainly on the lines of the legislation promoted by the Provinces of C.P. and U.P. and by the Government for Delhi with some modifications.

Sd/- P.N. KAO, 21/11

Secretary to the Govt. of India.

U.O. No. to P. & G.D. No. 407-Const., dated the 22nd November 1947.

RVK/ 26/5.

GOVERNMENT OF INDIA
NOTES IN THE MINISTRY OF LAW.

The question referred by the Bombay Government is whether that the Government can enact an Ordinance on the lines of the draft enclosed with Mr. Taunton's letter of 3rd December or whether this should be done by the Central Government.

2. The Remembrancer of Legal Affairs of the Provincial Government has in paragraph 1 of his opinion dated the 22 November 1947 raised certain doubts based mainly on the fact that the object to be achieved is relatable to Entry 17 in the Federal List. The entry is as follows:-

"Admission into, and emigration and expulsion from India, including in relation thereto the regulation of the movements in India or persons who are not British subjects domiciled in India or subjects of any acceding states."

3. From the draft Ordinance prepared by the Bombay Government it appears that they intend to provide for the following matters:-

(i) Registration of refugees.

(ii) Compulsory movement of refugees from one place to another in the Province.

(iii) Compulsory vaccination or inoculation of refugees.

Notwithstanding the objections pointed out by the Legal Remembrancer it appears to me that the Ordinance is entirely within Provincial Powers. "Refugee" has been defined in section 2 of the draft Ordinance in such a way as not to limit the definition necessarily to the category of persons comprised

with in Entry 17 in the Federal list when for the sake of convenience I shall hereafter call foreigners. A person entering the Province of Bombay having left his place of residence elsewhere on account of civil disturbances or fear of disturbances need not necessarily be a person "who is not a British subject domiciled in India or subject of an acceding State". He may have migrated to the Province of Bombay from some other part of the Indian Union.

6. Assuming however that in the present state of things refugees as defined in Section 2 of the draft Ordinance will consist mostly of foreigners, still I think the Ordinance would fall within the Provincial powers.

7. As is made clear in the preamble of the Ordinance, the proposed legislation is aimed at securing public safety, maintenance of order, public health etc. which are all provincial subjects. In securing these objects the Provincial Legislature can within its powers enact legislation which affects largely or even exclusively the class of persons whom I have called foreigners. As directed by the Privy Council, it is the pith and substance of legislation which must be considered and in pith and substance the proposed legislation will I think be relatable to provincial subjects.

7. Moreover I doubt very much whether the proposed legislation can be related to Entry 17 in the Federal List at all though it may relate to foreigners. The Canadian and the Australian constitutions as well as the Devolution Rules under the Government of India Act of 1919 give power to the Centre in much wider terms. They place "Naturalisation and aliens" in the Central list, thus making all aliens the exclusive subject matter of Central legislation. It is not so under Entry 17 in the Federal List of the present Indian Constitution. Aliens as such are not the subject matter of Central

legislation. The Central Power regarding the regulation of movement of foreigners is available only if it is exercised in relation to "admission into and emigration and expulsion from India". The Legal Remembrancer has argued that the words "in relation thereto" must be construed in a wide sense. It seems to me that however widely the words areconstrued, a legislation which aims at regulating the movements of foreigners without any reference to their admission into or emigration or expulsion from India would not be covered by Entry 17.

8. In this connection, I would invite attention to the note of Sir B.N. Rao dated the 23rd September 1938 in which he pointed out that provisions relating to registration of foreigners in British India and the compulsory restriction of their movement in British India were relatable to Entry 1 (preventive detention in British India for reasons of State connected with Defence, External Affairs etc.), Entry 3 (External Affairs) or Entry 17 (already quoted) in the Federal List according as the purpose of compulsory registration or compulsory restriction of movement was (a) subsequent preventive detention for reasons of State connected with Defence etc. or (b) Prevention of communications with foreign States or (c) subsequent expulsion from British India. It is thus clear that enactments like the Foreigners Act of 1864, the Registration of Foreigners Act of 1939 or the Foreigners Act, 46 in so far as they contain provisions for the registration or the compulsory restriction of movements of foreigners are relatable not only to Entry 17, but also to Enty 1 and 3 of the Federal List and that they are so related because the purpose in view is one of the three mentioned above. If the purpose is the maintenance within theProvincial List as is clearly the case here, the enactment would not fall under any of the aforesaid federal entries. It also follows that the analogy between the Acts just mentioned and the proposed legislation which

the Legal Remembrancer seeks to establish is untenable.

9. There is one further argument in favour of the view taken in the preceding paragraphs. Though, as already point ed out, Central power under the Canadian Constitution is much wider comprising as it does the whole subject of aliens, it has been held by the Privy Council in at least two cases that Provincial Legislation with respect to subject within the powers of the Provinces is intra vires though it affects aliens (vide Cunningham V. Tomey Homma 1903 A.C. 151 and Brooks-Bidlake and Whittall V. Attorney General for British Columbia (1923) 92 L.J.P.C. 124) It follows that the proposed legislation being in pith and substance relatable to Provincial subjects, the fact that is affects foreigners falling within Entry 17 would not render it invalid.

10. It would indeed be a curious result of the Constitution Act if a Province finding an extra population of Migrated persons on its hands which is proving a menance to the maintenance of law and order should be powerless to deal with the situation, merely because the migrated persons happen to be foreigners. The Provincial Government of Bombay did not and in fact could not regulate the entry of such persons in the Province. They entered the Province in the ordinary course without any restriction and the Province is now faced with problems arising from their presence within the Province. The Ordinance as drafted proposes to deal with these problems entirely within the Provincial powers that is to say for the purpose of securing public safety, maintenance of order public health etc. The three types of provisions mentioned in paragraph 3 above are all intended to secure these objects. It would not, I think, be correct to describe such a measure as "Regulation of movements of persons described in Entry 17 in relation to their admission" since it has nothing to do with admission of such persons into

India. The legislation is solely for the purpose of achieving the objects mentioned in the preamble and is thus relatable to Provincial subjects.

11. For these reasons the Ordinance as drafted appears to me to be entirely within Provincial Powers. On the other hand, I do not think the Centre can undertake such legislation because apart from other difficulties, the provision in section 8 relating to compulsory vaccination and inoculation of refugees is relatable to the Provincial subject of public health and sanitation (Entry 14 in the Provincial List) and is beyond the powers of the Central Legislature.

12. With reference to the matters referred to in paragraph 8 of the Legal Remembrancer's note, adequate powers to make rules regarding port quarantine already exist in section 6(1)(p) of the Indian Ports Act, 1908, and no further legislation on the subject seems necessary. As regards expulsion from the Province, probably Central legislation would be required. But this is apparently not a pressing problem and may be dealt with in due course on all India basis. For the immediate needs of the Province, and Ordinance in the form of the draft prepared by the Bombay Government can be issued by that Government.

Sd/- K.F. Bhandarkar,
2nd Solicitor,
Min. of Law,
Government of India.

HVI. 28/5.

Office of the R.L.A.

The draft Ordinance (slipped L) has been formally amended.

2. The P. and S. Department is requested to consider whether any of the additional changes suggested by the Government of India in their letter at page 79 ante should be carried out in the present Ordinance.

3. In view of the Controller of Rationing's note (slipped A approved by H.M. (L), the following may be inserted as section 8 in the Ordinance, namely:-

Power of Provincial Government to refuse ration documents to refugees occupying or residing in specified premises.

"8. Notwithstanding anything contained in the Essential Supplies (Temporary Powers) Act, 1946, or any order made thereunder, the Provincial Government may, by General or special order, direct that no ration document or any other document issued under the said Act or any Order made thereunder for the purpose of controlling the distribution of any essential commodity shall be issued to any refugee or refugees occupying or residing in such premises as may be specified in the order."

XXIV of 1946

As the provisions of the above section are repugnant to the provisions of the Essential supplies (Temporary Powers) Act, 1946, and of orders made thereunder which are existing laws falling in part II of the Concurrent Legislative List in virtue of the provisions of sub-section (4) of section 2 of the India (Central Government and Legislature) Act, 1946 (9 and 10 Geo. 6 Ch. 39), it will be necessary to obtain the instructions of the Governor General before promulgating the Ordinance under the proviso to section 88(1) of the

Government of India Act, 1935. In view of the policy of decontrol since adopted by the Government of Bombay, it is however for consideration of the P. and S. Department whether it is necessary to insert the proposed section 3.

4. The P. and S. Department will no doubt attach a suitable Statement to the Ordinance.

Sd/- P.M. LAD, 20/12

Remembrancer of Legal Affairs.

U. O. to P. and S. Department, No. 18235, dated the 20th December 1947.

Submitted for signature

Id.- 20-12-47.

MVT. 20/5.

Office of the Raja's.

The following section to provide for compulsory vaccination or inoculation has been inserted in the proposed Bombay Refugees Ordinance, 1947, namely:-

"8. REFUGEES ORDERS FOR THE VACCINATION AND INOCULATION for Refugees.

(1) An Officer authorised by the Provincial Government in this behalf may, by order in writing, require a refugee or any person responsible for the registrationsof a refugee under sub-section (1) of section 4, to get himself or the refugee for whose registration he is so responsible vaccinated against small-pox or inoculated against plague, Cholera or typhoid within fifteen days of such order, except where a certificate is produced from a registered medical practitioner or vaccinator or inoculator duly authorised by the Provincial Government in that behalf that such refugee has been vaccinated or re-vaccinated or inoculated, as the case may be, by him within six months immediately preceding the date of the order.

(2) Nothing in this section shall affect the liability of any person to get himself or any other persons vaccinated or inoculated under any law for the time being in force."

S.L.C.

Sd/- G.H. 24/12.

for Remembrancer of Legal Affairs.

U.O. to Health and Local Government Department, No. 13402, dated the 24th December 1947.

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Office of the R.L.A.

In accordance with the decision of Government, the draft ordinance relating to the refugees has been re-drafted as a Bill and is sent herewith. The Bill contains a clause empowering Government to refuse ration cards to refugees occupying or residing in specified premises. This clause was proposed by the Controller of Rationing and was approved by the H.M.(L). As pointed out in this office U.O. No. 13235, dated th 20th December 1947, the provisions of law are repugnant to the provisions of the Essential Supplies (Temporary Powers) Act, 1946 and of Orders made thereunder which are existing laws falling in part II of the Concurrent Legislative List, and it will, therefore, be necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935. If Government, however, ultimately decides against the inclusion of this clause in the Bill, it will be necessary to re-number the relevant clauses in the Bill. The Bill requires the recommendation of the Governor under section 82(3) of the Government of India Act, 1935.

2. The R.L.A. adheres to the view taken by him in his opinion No. 407-Confl., dated the 22nd November 1947, that it is not competent to the Provincial Government to enact the proposed measure. For the reasons stated by him in the accompanying note, he does not share the view taken in the 2nd Solicitor's Note sent by the Government of India.

Sd/- P.M. IAD. 15/1

Remembrancer of Legal Affairs.

U.O. to the P. & S.D. No. 573 dated the 19th Januar-
XVY. 26/5.

According to the latest pronouncement ofthe Privy Council in the case of Bank of Commerce Limited, in each case one has to consider what the substance of an Act is and whatever its ancilliary effect, attribute it to the appropriate list according to its true character. If we look at clause 4 of the Bill, it will be found that the true character of the Bill is to regulate the movements of the refugees coming from Pakistan in relation to their admission into the province of Bombay. Clause 4 of the Bill expressly requires every refugee, within 15 days from coming into operation of the Ordinance or within 7 days from the date of his arrival in the Province, whichever is later, to register himself. This provision has a direct relation to the admission of the refugees in the province and it is difficultyto understant how the ~~refusihas been re constitued~~ regulation can be Construed as having no reference to the admission of the refugees into the Province of Bombay. The proposition which he has laid down that a legislation which aims at regulating the movements of foreigners without reference to their admission into or emmigration or expulsion from India would not be covered by entry 17 in List 1, is no doubt correct, but can we say that the proposed Ordinance does not refer to their admission into the Province of Bombay? The answer is obviously in the negative. The case of Cunnigham and Attorney General for British Columbia 1903 A.C. 151 supports on the contrary the view taken by the R.L.A. In that case they Privy Council held that the Provincial Legislature has a right to determine, under section 92, sub-section (1), of the British North America Act, what privileges, as distinguished from necessary consequences, shall be attached to naturalization. In that case, the language of the Provincial Act didnot purport to deal with the consequences of either alienage or naturalization, and

therefore, the provincial law was considered to be valid. The present Bill contains provisions which in effect provide for consequences that follow the admission of refugees into the Province of Bombay. The second Privy Council case Namely, Brooks-Bidlake Whittal and the Attorney General for British Columbia (1923-92 L.J.P.C. 134) does not also support the proposition which the 2nd Solicitor favours in his opinion. In that case, the Privy Council held that the Provincial law was not ultra vires the provincial legislature a since although, by section 91, head 25 of the British North America Act, 1867, the Dominion Legislature had exclusive Legislative authority as to naturalisation and alienage, the functions of regulating the management of the property of a Province and of determining whether a grantee or licensee of that property should or should not employ persons of a certain race, were assigned by section 92, head 5 and section 109 to the Legislature of the province. There was nothing in section 91 conflicting with that view. Here there is no such question. Here the legislation is aimed at regulating the movements of the refugees coming from Pakistan after their arrival in India. Such legislation is directly relatable to entry 17 in List 1 and it cannot be justified under any entry in the Provincial List. The argument advanced that it would be a curious result of the constitution if the province, having on its hands an extra population of migrated persons, should be powerless to deal with the situation merely because the migrated persons happen to be foreigners, has no real substance. Under the Constitution Ac the Province is not helpless. It can, to preserve law and order, certainly make laws in relation to persons who prove a menance to the maint nance of law and order but certainly not in the fashion as proposed. In the name of law and order, the Province cannot encroach on the Centmal field.

2. The above view is also supported by the observations of Lord Viscount Haldane L.C. in the case of 'John Deere Plow Company, Limited' A.C. 330. In that case Lord Haldane observes :

> "It must be borne in mind in construing the two sections (Sections 91 and 92 of the British North America Act, 1877) that matters which in a special aspect and for a particular purpose may fall within one of them may in a different aspect and for a different purpose fall within the other. In such cases the nature and scope of the legislative attempt of the Dominion or the Province, as the case may be, have to be examined with reference to the actual facts if it is to be possible to determine under which set of powers it falls in substance and in reality. This may not be difficult to determine in actual and concrete cases."

The actual and concrete cases in which the Refugee Bill is sought to be made is apparent. The Bill seeks to regulate the movements of refugees coming mostly from Pakistan. The main provisions of the Bill are, therefore, directly connected with the admission of the refugees from Pakistan. Any attempt to disguise the fact by professing to legislate in respect of matters in the Provincial Legislative List will not be upheld by the Courts. In the case referred to above Lord Haldane has mentioned with approval the case of 'Union Colliery company of British Columbia, Ltd.' A.C., 580. In that case the Provincial Legislature had enacted "the Coal Mines Regulation Act, 1890" under section 4 of which Chinamen of full age were prohibited from employment in underground coal workings. The Act was considered ultra vires of the Provincial Legislature. The following are observation of the Privy Council:-

> "The Lordships see no reason to doubt that, by virtue of section 91, sub-section 25, the legislature of the Dominion is invested with exclusive authority in all matters which directly concern the rights, privileges, and disabilities of the class of Chinamen who are resident in the provinces of Canada. They are also of opinion that the whole pith and substances of the enactments of s.4 of the Coal Mines Regulation Act, consists in establishing a statutory prohibition which affects aliens or naturalised subjects, and therefore, trench upon the exclusive authority of the Parliament of Canada."

In the present cases also the pith and substance of the proposed law consists in regulating the movements of refugees coming mostly from Pakistan and any Provincial legislation regulating their movements is likely to be considered by Courts as trenching upon the exclusive authority of the Dominion Legislature.

Section 3 of the Essential Supllies (Temporary Powers Act, 1946 gives power to the Government to make an order for regulating or prohibiting the production, supply and distribution of an essential commodity for inter alia securing the equitable distribution and availability at fair prices of the supplies of such commodity. Clause (d) of sub-section (2) of section 3 of the Act contemplates the making of an order for regulating by licences, permits or otherwise the storage, transport, distribution, disposal acquisition, use or consumption of any essential commodity The word used in this clause is "regulating". As held in the case of "Dick vs. Badart" (1883) 10 Q.B.D. 387, a power to regulate does not include a power to prohibit. In that case a dock company, who were undertakers under a special Act, had made by-laws prohibiting workmen of a specified class from working on board any vessel in the dock, unless authorised by the company or unless permission in writing had previously been obtained from the superintendent of the dock. The company had statutory powers to make by-laws (among other purposes) for regulating shipping unshipping and removing of all goods within the limits of the dock and for regulating the duties and conduct of all persons, whether the servants of the undertakers or not, employed in the dock. It was held that the by-law excluding that particular class of workmenk was beyond the powers conferred by the Act; first, because section 33 of the Harbours, Docks and Piers Clauses Act, 1847, which was incorporated in the Special Act, had declared that, subject to certain specified conditions in any special Act authorizing the construction of any dock, the harbour, docks and pier should be open to all persons for shipping and unshippingx of goods, and secondly, because a power to

make by-laws for regulating the duties and conduct of persons employed in the dock could not authorise a by-law excluding a specified class of persons. Similarly under the Essential Supplies (Temporary Powers) Act an order cannot be made excluding a specified class of persons from the distribution of any essential commodity. The proposed amendment to the Rationing Order would, therefore, be considered as invalid. The object can be achieved in a proper legal manner by making suitable provision in the Ordinance proposed to be issued in respect of refugees.

Sd/- P.M. LAD. 17/11/47

Remembrancer of Legal Affairs.

F. R. to C.S.D. No. 19394, dated the 17th Novemb

VY. 28/5.

No. 3749

Legal Department,
Bombay Castle, 19th March 1948.

From.

P.M. Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay,
Legal Department.

To

The Private Secretary to the Governor
of Bombay.

Subject:- A Bill to provide for compulsory registration and movement of refugees and for certain other purposes.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy of the Bill to provide for compulsory registration and movement of refugees and for certain other purposes which was read for the third time and passed at the sittings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 23rd February 1948 and on the 2nd March 1948.

As regards the vires of the Bill the question was referred to the Government of India who are inclined to the view that the subject-matter of the Bill falls in the Provincial field i.e. entries 1, 14 and 37 in List II in the Seventh Schedule to the Government of India Act, 1935. The provisions of the Bill are not repugnant to the provisions of any earlier dominion or existing law with respect to any matter in the Concurrent Legislative List, and

it is not therefore necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

3 The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

4. I also forward herewith one copy of each

| | |
|---|---|
| 1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons. | of the items Nos. |
| 2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council. | 1, 2 and 4 and two copies of item |
| 3. Bill as read for the third time and passed by the Bombay Legislative Council. | No. 3 of the papers |
| 4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 23rd February 1948 and of the Bombay Legislative Council dated the 3rd March 1948. | noted in the margin. |

The Bill was not referred to a Select Committee.

I have the honour to ...,

Sir,
Your most obedient servant,

Sd/- P.M. Lad, 19/3

Secretary to the Government of Bombay, Legal Department.

Through
The Chief Secretary to the Government of Bombay, Political and Services Department.

Resubmitted for signature.

MOT- 18/3/48

S.S. SND- 18/3

REVY. 28/5. S.A.S. Sd - 18/3

Office of the R.L.A.

rough the propositions supplied by the Political & Services Department, and after consulting the legislation made in this behalf by the Provinces of C.P. and U.P., I inclined to the opinion that legislation along these lines is not competent to a Province. Such legislation is properly referable to entry No. 17 in the Federal Legislative List, which after the recent adaptions, reads as follws; "Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State". Our refuges problem is primarily one of regulating the movements of persons who have come or who may hereafter come from Pakistan or from the Indian State of Hyderabad which is not so far an acceding State. Howsoever widely we might frame the definition of the expression "refugee" so as to extend it even to persons who may come from other Provinces of the Dominion of India, it is obvious that the legislation would be directed primarily to persons who come from Pakistan and Hyderabad, and in any event it would be impossible to sever the case of this latter class of persons. That class comes within the description "of persons who are not British subject domiciled in India or subjects of any acceding State". India in this entry naturally means the Dominion of India. Compare also the corresponding entry for Pakistan. Legislation

Probably this view is against the 'standstill' agreement but that has to be verified.

whereby such class of persons are required, after their entry into the Province, to register themselves or to reside in a particular camp or a place or to go to a particular camp or a place as directed by the Provincial Government would be legislation falling directly under entry 17, for, it would be legislation for the Regulation of the Movements in relation to the admission of such class of persons into India. The words "in relation to" are quite wide, and on the recognized principles of interpretation, the entry including these words must receive a plenary meaning on broad and liberal principles. Perhaps this difficulty was realized by the Provinces of C.P. and U.P. who have, therefore, so framed their preamble as to suggest that the legislation falls not within entry 17 but is referable to some other entries in the Provincial List. I submit that the pith and substance of the legislation however is the regulation of movements of persons described in entry 17 in relation to their admission. The regulation is not intended primarily for the purpose of law and order nor for the purpose of sanitation and health or relief of the poor or unemployment. Legislation under those heads cannot naturally be directed only against a particular class of persons coming into India. The use of the word "movements" simpliciter, and the omission of the words "regulation of" to qualify the word "movements" would not also serve to conceal the real object of the legislation. I apprehend that a preamble drafted in this fashion is liable to be challenged as a colourable exercise of the powers given

to a Province howesoever skilfully it may be drafted so as not to get hit by entry 17 in the Federal Legislative List. It is quite apparent that the restrictions we are imposing upon the refugees by way of registration or controlling their movements are imposed upon them qua refugees, i.e. as outsiders who have come into our Province. The proposed provisions are almost indistinguishable from the provisions which we find in the Foreigners Acts of 1864 and 1946, and these Acts have always been understood to be referable to entry No. 17. In short it would not be competent to a Province to frame legislation of the kind proposed, and such legislation can be promoted only by the Central Government. The Advocate General (Mr. C.K. Daphtary) who was unofficially consulted on this point agrees with this view.

2. Central legislation would also be more desirable from the point of view of practical expediency. Powers can then be taken even to expel refugees from the Province and requiring them to go back to their homeland in case that course becomes necessary. The Health & Local Self Government Department made a suggestion that powers should be taken for compulsory inoculation and similar other purposes. Bombay being a port, people who land there from Pakistan territory may be required to be kept in a port quarantine for such purposes. That again is a subject only reserved for the Centre. In a Central legislation it would be easier to give a more logical definition of the term "refugee" than has been adopted so far. The problem of refugees is a common problem affecting almost all Provinces and from that point of view also, uniform Central legislation

would be more desirable. H.M.(Law) is also of opinion that such legislation should be undertaken by the Central Government.

3. The question may, therefore, be referred to the Central Government for a final decision. In the meanwhile, I am enclosing a draft modelled mainly on the lines of the legislation promoted by the Provinces of C.P. and U.P., and by the Central Government for Delhi with some modifications.

Sd/- P.M. LAD, 21/11
Remembrancer of Legal Affairs.

. xvi. 26/8.

No. P.S.G. - 1386

Office of the Private Secretary to the Governor,
Government House,

Bombay, 24th March 1948

From

L.M. Nadkarni, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay

To

The Secretary to Government,
Legal Department.

Subject: The Bombay Refugees Bill, 1948.

Sir,

With reference to your letter No. 2749, dated 19th March 1948, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the authentic copy of the Bombay Refugees Bill, 1948.

Your obedient servant,

Sd/-

Private Secretary to the
Governor of Bombay.

EVY. 23/3.

Bill.

A Bill to provide for Compulsory registration and movement of refugees and for certain other purposes.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1547.
Bombay Castle, 13th February 1948.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay for publication in the Bombay Government Gazette, dated the 13th February 1948, as Bill No. XVII of 1948.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari Script), and the translations should be published in the Bombay Government Gazette, on the 13th February 1948.

3. The dates of the various publications should be reported to the Bombay Legislature Department.

By order of the Governor of Bombay,

Sd/- S.L. CHANDRANI,
Assistant Secretary to Government.

To

The Manager, Government Central Press, (Bombay with the Bill and S.O.R. and with a request that 230 Gazette copies of the Bill and S.O.R. may be forwarded to the Bombay Legislature Department for distribution to the members of the Bombay Legislative Assembly and 40 copies for the use of the Legal Department and 30 copies for the use of the P. & S. D.) etc.

Act 2.

Publication of the Bombay Refugees Act, 1948.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 3050,

Bombay Castle, 29th March 1948.

Letter to the Private Secretary to the Governor, No. 2748, dated the 19th March 1948.

Letter from the Private Secretary to the Governor, No. P.S.G.-1386, dated the 24th March 1948.

With reference to your letter No. 2748, dated the 19th March 1948, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the authentic copy of the Bombay Refugees Bill, 1948".

RESOLUTION.- The law should be published as Bombay Act No. XXII of 1948, in the Bombay Government Gazette dated the 29th March 1948.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Political and Services Department.

By order of the Governor of Bombay,

Sd/- S.L. CHAUDHARI,

Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay, (with a copy of the Act and with a request that 50 Gazette copies of the Act may be forwarded to the Legal Department.) etc.

EVT. 29/3.